IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 25487 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUMRA MOHMAD SAFI MOHMAD - Petitioner(s)
Versus
THE STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR UMANG K CHOKSI for Petitioner(s) : 1,
MR MR MENGDEY, AGP for Respondent(s)

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 29/10/2007

ORAL JUDGMENT

Rule. Learned AGP Shri Mengdey waive service of rule on behalf of the respondents.

2. Short question that calls for consideration in this petition is whether the petitioner is covered by the provisions of notification dated 27.8.2007 issued by the State Government.

3. Since this notification was not available on record, learned AGP Shri Mengdey made available a copy of the notification dated 27.8.2007 issued by the State Government, which is taken on record.

4. The petitioner had purchased an immovable property by entering into a registered sale deed dated 7.1.98. Since the authorities were of the opinion that the stamp duty paid thereon was deficient, proceedings were commenced under the provisions of the Bombay Stamp Act. Ultimately, the same culminated into an order dated 30th September 2002 passed under section 32-A of the Bombay Stamp Act requiring the petitioner to pay the additional stamp duty.

5. It is the case of the petitioner that subsequently, the State Government came up with a general amnesty giving certain relaxation in payment of stamp duty by notification dated 27.8.2007. The said notification reads as follows:-

"NOTIFICATION
Revenue Department
Sachivalaya, Gandhinagar
Dated 27-08.2007.

No.GHM-2007-53-M-STP-102007-225-H.1. In exercise of powers conferred by clause (a) of Section 9 read with Section 46 of the Bombay Stamp Act 1958 (Bom.X of 1958) (hereinafter referred to as "the said Act"), the Government of Gujarat, hereby reduces for the period on and from 1st September 2007 to 31st Oct. 2007 in the whole of the State of Gujarat, ...

(i)the duty chargeable and interest payable on the instruments, particulars of which are specified in column 2
(ii)To the extent specified in column 3; and
(iii)Subject to the conditions specified in column 4 of the schedule appended hereto.

SCHEDULE

Sr.No	**Particulars of instreuments**	**Extent Reduction**	**Conditions**
1	2	3	4
1	Instruments which were presented for registration prior to 1st April 2000, wherein the order under section 32A or section 32B of the said Act has been passed upto 31.12.2006 and the party has not paid the deficit duty.	(i) Seventy per cent of the amount of deficit duty; (ii) Whole amount of interest	If the party makes payment of thirty per cent of the amount of deficit duty during the period commencing from 1st September 2007 to 31st October 2007.
2	Instruments which were presented for registration on or after 1st April 2000 where in the order under section 32A or section 32B of the said Act, has been passed upto 31.12.2004 and the party has not paid the deficit duty	Whole amount of interest	If the party makes the payment of the whole amount of deficit duty during the period commencing from (1st September 2007 to 31st October 2007)

Explanation - For the purpose of this notification, “deficit duty” means difference between the amount of duty determined under sub-section (3) of section 32A of the said Act and the amount of duty already paid in respect of the instrument for which duty is so determined.

By order and in the name of the Governor of Gujarat.”

6. Having heard the learned advocates appearing for the parties, there does not appear to be any dispute that the case of the petitioner falls under Sr.No.1. He had entered into a registered sale deed on 7.1.98. In his case, the stamp authorities had passed an order for additional stamp duty on 30th September 2002. Thus both the conditions mentioned in Sr.No.1 under column 2 to the schedule in so far as the particulars of instruments are concerned, stand fulfilled. The petitioner therefore, is entitled to get the benefit of the reduction in the stamp duty, if he fulfills the condition contained in column 4 thereof, which requires him to make payment of 30 per cent of the deficit duty during the period commencing from 1st September 207 to 31st October, 2007.

7. It is the case of the petitioner that he has fulfilled the above condition also. This being so, he would be entitled to the benefit specified in the

notification. It is also stated that the petitioner had given a formal application to the authorities on 26th September 2007 for granting him the benefit of the said notification, however, he has not received any reply.

8. Under the circumstances, I find that the petitioner is covered under the said scheme and if he also fulfills the conditions as contained in column 4 of the schedule, he should be given the benefit of the reduction in the stamp duty. Since the last date for availing this benefit is 30th October, 2007 (31st October, 2007 being a holiday), the authorities are directed to examine the case of the petitioner and if it is found that he has already paid the difference of amount as per column 4 to the said schedule, grant the benefit of the reduction in stamp duty as provided in the schedule. In case it is found that there is deficit that the petitioner has to make good as per column 4, and if the petitioner deposits the said amount to cover such deficit, then also, he shall be given the same benefit.

9. With the above directions, the petition is disposed of. Rule is made absolute accordingly.

Direct service today is permitted.

(Akil Kureshi, J.)

(vjn)